

SUPPRESSION OF LOTTERY TRAFFIC, ETC.

MARCH 2, 1904.—Ordered to be printed.

Mr. CLAY, from the Committee on Post-Offices and Post-Roads, submitted the following

REPORT.

[To accompany S. 2514.]

The Committee on Post-Offices and Post-Roads, to whom was referred the bill (S. 2514) to amend the act of March 2, 1895, entitled "An act for the suppression of lottery traffic through national and interstate commerce and the postal service, subject to the jurisdiction and laws of the United States," having considered the same, report thereon with a recommendation that it pass.

The bill has the approval of the Post-Office Department, as will appear by the following letter:

POST-OFFICE DEPARTMENT,
OFFICE OF THE POSTMASTER-GENERAL,
Washington, D. C., December 4, 1903.

SIR: I have the honor to transmit herewith, for the consideration of the Committee on Post-Offices and Post-Roads, a copy of a proposed amendment to the act of March 2, 1895, which relates to the suppression of lottery traffic. The suggestion of an amendment to that act is prompted by the decision of the United States circuit court for the Northern district of Illinois, in the case of *United States, ex rel. Champion, v. Ames*, reported in the Federal Reporter, volume 95, page 453. The court, in passing upon one of the points raised in that case, spoke as follows:

"The complaint charges that the defendant caused to be carried and transferred by the Wells-Fargo Express Company, from the State of Texas to the Territory of New Mexico, certain lottery tickets. The act designates the offense to be the carrying or transferring of such matter from one State to another in the United States. The question to be decided, therefore, is in what sense the word 'State' is employed in the act in question. Does it include a Territory of the United States?

"At a very early day the question came before the Supreme Court of the United States (*Hepburn v. Ellzey*, 2 Cranch, 445), in regard to the jurisdiction of the Federal courts, the act conferring jurisdiction providing that in order to confer jurisdiction upon the Federal court there must be a controversy between a citizen of one State and a citizen of another State, or between an alien and a citizen. The question arose whether an inhabitant of a Territory of the United States, who was a citizen of the United States, could maintain a suit in the Federal court, and upon that question we have the decision of the Supreme Court, speaking by Mr. Chief Justice Marshall, than whom no greater intellect ever adorned the bench of the Supreme Court

of the United States. This decision was made in what might be termed the 'formative period' in the construction of the Constitution, at a time when many of its framers were living, and it might be termed a 'contemporaneous construction' of the Constitution. I have also read with great interest and care the several decisions of the district court of Oregon to which the court here was referred upon the hearing, and the reasoning of those cases has greatly impressed me; for there can be no sort of reason why a citizen of the United States who happens to be an inhabitant of a Territory should not be allowed access to the Federal courts of his country when an alien has that right, and it has seemed to me that the statutes should have been so construed that the word 'State' should apply to a Territory of the United States which is under its Government and subject to its laws.

"But the same argument and the same reasoning which induced Judge Deady to hold that the word 'State' includes 'Territory' was presented to, and passed upon by, the Supreme Court at that early date in the construction of the Constitution, and the Chief Justice remarked: 'The act of Congress obviously used the word "State" in reference to the term as used in the Constitution,' and therefore it becomes necessary to ascertain in what sense the word is employed in the Constitution, and 'the result of that examination is a conviction that the members of the American Confederacy only are the States contemplated in the Constitution. The House of Representatives is to be composed of members chosen by the people of the several States, and each State shall have at least one Representative.' The Senate of the United States shall be composed of two Senators from each State. Each State shall appoint for the election of an Executive a number of electors equal to its whole number of Senators and Representatives. 'Those clauses show,' says the Chief Justice, 'that the word "State" is used in the Constitution as designating a member of the Union, and excludes from the term the signification attached to it by writers on the laws of nations.' It was claimed before that court that other passages from the Constitution showed that the term 'State' was used in a more enlarged sense, but the court observed on examining the passages quoted that they did not prove what was attempted to be shown by them. 'It is extraordinary,' says the Chief Justice, 'that the courts of the United States, which are open to aliens and to the citizens of every State in the Union, should be closed upon them' when they are citizens and inhabitants of a Territory. 'But this is a subject for legislative, not for judicial, consideration.'

"I feel bound by the decision of the Supreme Court to which I have referred, and which has been upheld and adhered to continuously from that time to the present. (*Hooe v. Jamieson*, 166 U. S., 395; 17 Sup. Ct., 596.) It is the law of the land to-day, with respect to the jurisdiction of the Federal courts, that the inhabitants of a Territory can not seek justice within the portals of a Federal court.

"Here is an act creating an offense unknown to the common law. It is a cardinal canon in the construction of criminal statutes that they should be construed strictly; that the courts have no right to extend their meaning beyond the scope of the terms employed; and we must seek for the intent of the lawmaking power in the language which has been used in the act itself. When Congress, knowing, as we must presume it did, that the word 'State,' as used in the Constitution, means simply State, and not Territory, and knowing also that the act, if it could be upheld at all, could only be sustained under the power given to Congress to regulate commerce between the States, employed that term, we must assume that it was in the constitutional sense, as interpreted and declared by the Supreme Court of the United States.

"It may be said—it may occur to anyone to say—that the transportation of lottery tickets into a Territory which was under the absolute control of Congress was as much within the mischief intended to be prevented as the transportation of such tickets from one State to another; but it is no more true than was the powerful argument presented to the Supreme Court that it was not intended to prohibit to citizens of the United States, because they happened to be domiciled in a Territory, the protection of the courts of the United States, and it was as easy a matter in the one case as in the other, as suggested by the Chief Justice, to apply the remedy. If Congress desired to prohibit the transportation of lottery tickets into a Territory of the United States, it should have said so. We may not enlarge the scope of a criminal statute to declare an offense which Congress has not created because we see that the mischief is the like mischief that Congress has sought to prevent in respect to other geographical divisions of the Union. I have come reluctantly to the conclusion that it would be judicial legislation for the court to hold, in view of the decisions of the Supreme Court, that the word 'State,' as used in this act, includes the Territories of the United States. It follows, therefore, that this complaint presented to the commissioner charges no offense against this petitioner, and that he must be discharged from imprisonment."

No appeal was taken from this decision.

An extension of the act so as to include all cases which may arise through national and interstate commerce, as indicated by the title of the act, seems advisable. In doing this the language of the act of February 4, 1887 (as amended 1889, 1891, and 1895), entitled "An act to regulate commerce," has been used, and the expression "or Territory under the jurisdiction of the United States" has been added in view of the decisions of the Supreme Court in the insular cases. The words used in amendment are underscored, and the words stricken from the act are put in parentheses for convenience.

Very respectfully,

H. C. PAYNE,
Postmaster-General.

The CHAIRMAN COMMITTEE ON POST-OFFICES AND POST-ROADS,
United States Senate.

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